

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

DAVID JONATHAN LOBE,

Appellant.

No. 39494-4-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — A jury found David Lobe guilty of third degree malicious mischief – domestic violence, a gross misdemeanor.¹ The trial court sentenced Lobe to 365 days of confinement, which is the statutory maximum term of confinement for a gross misdemeanor. RCW 9.92.020. Lobe argues that the trial court abused its discretion in imposing this sentence. Concluding that it did not, we affirm.²

Trial courts have great discretion in imposing sentences within the statutory limits for misdemeanors and gross misdemeanors. *State v. Anderson*, 151 Wn. App. 396, 402, 212 P.3d 591 (2009). While the Sentencing Reform Act of 1981 (SRA), ch. 9.94A RCW, places

¹ The jury acquitted Lobe of unlawful imprisonment, harassment, and fourth degree assault.

² A commissioner of this court initially considered Lobe’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

substantial constraints on discretion in felony sentencing, no similar legislation restricts the trial courts' discretion in sentencing for misdemeanors or gross misdemeanors. *Anderson*, 151 Wn. App. at 402. For gross misdemeanors, courts may sentence a defendant to incarceration up to one year in jail. RCW 9.92.020; *State v. Trull*, 56 Wn. App. 795, 797, 784 P.2d 183 (1990) (maximum term of confinement for third degree malicious mischief, a gross misdemeanor, is one year).

Lobe argues that the trial court abused its discretion by imposing a one-year sentence because of his criminal history.³ We disagree. Lobe has had 14 domestic violence convictions in the last 11 years, has failed to complete domestic violence counseling, and was being sentenced on yet another domestic violence conviction. The SRA does not apply and the trial court could appropriately consider his extensive criminal history. *See Wahleithner v. Thompson*, 134 Wn. App. 931, 941, 143 P.3d 321 (2006) (SRA represents significant limitation on judicial discretion permitting none of the sentencing flexibility available for misdemeanors). The trial court's sentence did not exceed the statutory maximum and was legally correct. Moreover, given Lobe's extensive history of domestic violence, the trial court did not abuse its discretion by sentencing Lobe to 365 days confinement.

Lobe also argues that the trial court abused its discretion because Lobe would have faced a shorter standard range sentence if he had been convicted of felony second degree malicious

³ Lobe contends that the trial court's reference to "history" was a reference to his history with the victim, of which there was none. That is not correct. The State asked the court to impose a full year confinement because Lobe had 14 domestic violence-related convictions in the last 11 years. The trial court then agreed that Lobe's history justified a one-year sentence.

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mischief. But sentences for gross misdemeanors are not limited by the SRA's standard range for a comparable felony. *Anderson*, 151 Wn. App. at 402. Lobe's sentence is lawful and we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

HUNT, P.J.

WORSWICK, J.